

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

NOEL SANABRIA,
Defendant.

21-CR-313 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

The Government has moved for an order directing that the \$100,000 in cash posted by Defendant Noel Sanabria to secure his release on bail be applied toward his outstanding forfeiture judgment (in the amount of \$130,000) and fine (in the amount of \$5,000). (*See* ECF No. 235.)

28 U.S.C. § 2044 provides:

On motion of the United States attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This section shall not apply to any third party surety.

Defendant has opposed the Government's motion. (*See* ECF No. 244.) He contends that allowing forfeiture of his \$100,000 in bail funds, which came from his retirement funds, would create an "undue hardship." However, Section 2044's language is mandatory, providing that the court, on motion of the Government, "shall order" money deposited by the defendant for bail to be paid over to the Government to be applied to any assessment or fine. Moreover, the statute's reference to "undue hardship" is inapplicable, because it refers to the release of bail funds

“before sentencing.” In any event, Defendant has not established that ordering his bail funds to be paid toward his forfeiture judgment and fine would be unjust or an undue hardship. *See* Consent Prelim. Order of Forfeiture (\$130,000 “representing the amount of proceeds traceable to the offense . . . that the Defendant personally obtained”); PSR ¶¶ 101-09.

Accordingly, the Government’s motion is granted.

The \$100,000 in cash posted by Defendant Noel Sanabria to secure his release on bail is hereby ordered to be applied toward his outstanding forfeiture judgment and fine.

The Clerk of Court is directed to close the motions at ECF Numbers 235 and 244.

SO ORDERED.

Dated: December 5, 2023
New York, New York



J. PAUL OETKEN
United States District Judge